

## Internal Revenue Service

Department of the Treasury  
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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
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Date: SEPTEMBER 04, 2009

Son 1 =  
Son 2 =  
Taxpayer =  
Spouse =  
Year 1 =  
Firm =  
Year 6 =  
Trust 1 =  
Trust 2 =

Dear :

This responds to the letter dated March 17, 2009, submitted on your behalf, requesting an extension of time under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make allocations of generation-skipping transfer (GST) exemption to two trusts.

### FACTS

The facts submitted and the representations made are as follows. Son 1 and Son 2 are the children of Taxpayer and Spouse. In Year 1, Taxpayer established Trust 1 for the benefit of Son 1 and Son 1's issue. Also in Year 1, Taxpayer established Trust 2 for the benefit of Son 2 and Son 2's issue. The trusts provide for distributions of income and principal, based on an ascertainable standard, for the benefit of the son for whom the trust is named and his spouse and issue, during the lifetime of the respective son and the spouse of the respective son. On the death of the last to die of the son and that son's spouse, the trust accumulated income and principal is to be paid to that son's issue by right of representation.

Taxpayer and Spouse each made transfers to Trust 1 and Trust 2 in Year 1. Taxpayer and Spouse retained the services of Firm to prepare their United States Gift (and Generation-Skipping Transfer) Tax Returns (Forms 709). Firm was aware of the intention of Taxpayer and Spouse to allocate GST exemption to the transfers so that each trust would have an inclusion ratio of zero. Both Forms 709 were timely filed. However, the returns as filed did not correctly report the amount of the gifts made by each donor and failed to allocate the GST exemption of Taxpayer and Spouse to the trusts on their respective Forms 709.

Spouse died in Year 6. The failure to allocate GST exemption to the transfers to Trust 1 and Trust 2 was discovered by Firm in connection with preparing Spouse's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. To date, no taxable distributions, taxable terminations, or any other events have occurred with respect to the trusts that would give rise to a GST tax liability on the part of either trust or any of its beneficiaries.

Taxpayer now requests an extension of time under §§ 2642(g)(1) and 301.9100-3 to allocate Taxpayer's GST exemption to the transfers made to Trust 1 and Trust 2 in Year 1 and requests a ruling that the GST exemption allocated to the transfers will be effective as of the date of the transfers.

## LAW AND ANALYSIS

Section 2601 imposes a tax on every GST. A GST is defined under § 2611(a) as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2642(a) provides the method for determining the inclusion ratio. Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess of 1 over the "applicable fraction". The applicable fraction, as defined in § 2642(a)(2) is a fraction, the numerator of which is the amount of GST exemption under § 2631 allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip.

Under § 2631(a) (in effect at the time of the transfer), for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption (equal to \$1,010,000 for the year at issue) that may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations (in effect at the time of the transfer) provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3 of the Procedure and Administration Regulations.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with

§ 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an election described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or to advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Taxpayer is granted an extension of time of sixty (60) days from the date of this letter to allocate Taxpayer's available GST exemption with respect to the transfers Taxpayer made to Trust 1 and Trust 2 in Year 1. Although the allocations will be treated as being affirmatively made on the date of the transfers, we are specifically not ruling on whether any transfer made by Taxpayer is subject to an estate tax inclusion period under § 2642(f) and, accordingly, we are not ruling on the effective date of the allocations. In addition, we are specifically not ruling on the transfer tax value of the Year 1 transfers to Trust 1 and Trust 2 to be used in determining the inclusion ratio of each trust under § 2642(a).

The allocations should be made on a Form 709 for the year in which the transfers were made and the Form 709 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the returns.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. No opinion is expressed or implied as to the value for Federal transfer tax purposes of the transfers by Taxpayer and Spouse to Trust 1 and Trust 2. Finally, no opinion is expressed or implied as to whether the transfers by Taxpayer and Spouse are properly characterized as an indirect transfer by Taxpayer and Spouse of the underlying asset.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Curt G. Wilson  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosure:

Copy for § 6110 purposes